



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/573,617

03/28/2006

Anthony Walby Wakefield

2311153

9785

170 7590 09/15/2009

RICHARD M. GOLDBERG  
25 EAST SALEM STREET  
SUITE 419  
HACKENSACK, NJ 07601

EXAMINER

COOLEY, CHARLES E

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

09/15/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/573,617	<b>Applicant(s)</b> WAKEFIELD ET AL.	
	<b>Examiner</b> Charles E. Cooley	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-15 is/are pending in the application.
- 4a) Of the above claim(s) 13-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-3 and 5-15 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 May 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20090818; 20060328</u> .                                      | 6) <input type="checkbox"/> Other: _____                          |

## **NON-FINAL OFFICE ACTION**

1. **This application has been assigned to Technology Center 1700, Art Unit 1797 and the following will apply for this application:**

Please direct all written correspondence with the correct application serial number for this application to **Art Unit 1797**.

Telephone inquiries regarding this application should be directed to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197 or to the Examiner at (571) 272-1139. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

### ***Election/Restriction Requirement***

2. Applicant's election without traverse of Group I (claims 1-3 and 5-12) in the reply filed on 18 AUG 2009 is acknowledged.
3. Claims 13-15 are thereby withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 18 AUG 2009. Note claims 13-15, if retained in the application, should have the status identifier --(Withdrawn)-- in any subsequent claim listing.

### ***Priority***

4. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d). All of the CERTIFIED copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

***Information Disclosure Statement***

5. Note the attached PTO-1449 forms submitted with the Information Disclosure Statements filed 18 AUG 2009 and 28 MAR 2006.

***Oath/Declaration***

6. The oath or declaration is defective. A new oath or declaration in compliance with 37 C.F.R. § 1.67(a) identifying this application by its Serial Number and filing date is required. See M.P.E.P. §§ 602.01 and 602.02.

The oath or declaration is defective because:

Non-initialed and/or non-dated alterations have been made to the oath or declaration in the post office address of each inventor. See 37 CFR 1.52(c).

***Drawings***

7. The drawings are objected to because of the following informalities:
- a. the drawings contain improper sectional views. The plane upon which a sectional view is taken should be indicated on the view from which the section is cut by a broken line. The ends of the broken line should be designated by Arabic or Roman numerals corresponding to the view number of the sectional view, and should have arrows to indicate the direction of sight (37 CFR 1.84(h)(3)).

Correction is required.

For example, Figure 6A should be a sectional view taken along line 6A-6A in Figure 6B (not sectional line A-A appearing on the replacement sheet), etc. All sectional views should be corrected in accordance with 37 CFR 1.84(h)(3).

Applicant should also ensure a proper one-to-one correspondence between the specification and drawings in accordance with MPEP 608.01(g) and 37 CFR 1.84(f). The brief description of the drawings (with regard to Figures 6A and 6B) and the descriptive portion of the specification require revision in accordance with the above drawing objections.

Correction is required.

8. Applicant should verify that (1) all reference characters in the drawings are described in the detailed description portion of the specification and (2) all reference characters mentioned in the specification are included in the appropriate drawing Figure(s) as required by 37 CFR 1.84(p)(5).

### **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

#### **Replacement Drawing Sheets**

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment. Any replacement drawing sheet must be identified in the top margin as "Replacement Sheet" (37 CFR 1.121(d)) and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin.

#### **Annotated Drawing Sheets**

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing

Art Unit: 1797

sheets must be clearly labeled as "Annotated Marked-up Drawings" and accompany the replacement sheets.

### **Timing of Corrections**

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

### ***Specification***

9. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

10. The amended abstract is acceptable.

11. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed (MPEP 606.01).

### ***Claim Rejections - 35 USC § 102***

12. The terms used in this respect are given their broadest reasonable interpretation in their ordinary usage in context as they would be understood by one of ordinary skill in the art, in light of the written description in the specification, including the drawings, without reading into the claim any disclosed limitation or particular embodiment. See, e.g., *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re*

Art Unit: 1797

*Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000); *In re Morris*, 127 F.3d 1048, 1054-55 (Fed. Cir. 1997); *In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989).

The Examiner interprets claims as broadly as reasonable in view of the specification, but does not read limitations from the specification into a claim. *Elekta Instr. S.A.v.O.U.R. Sci. Int'l, Inc.*, 214 F.3d 1302, 1307 (Fed. Cir. 2000). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. Inc. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**14. Claims 1, 8, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Forshey et al. (US 2003/0010792 A1).**

The publication to Forshey et al. discloses in at least Figures 10 and 12 a mixing apparatus comprising a batch mixing vessel 69 or 906 having an inlet 41-48 or 917 to receive constituent material, an agitation assembly 65 with mixing paddles 66 for mixing the constituents within the vessel and an outlet 58 or 916 to convey batches of mixed material; a pressurizing device 1018 for pressurizing the mixing vessel to assist in evacuation of the mixed constituents from the outlet, and a batch loader including a conduit 1003 or 1005 through which the constituents are conveyed in use by fluid flow,

Art Unit: 1797

wherein a single pneumatic source 1018 is used both to pressurize the mixing vessel and to drive a jet pump 50, 51 or 1024 comprising the batch loader.

***Claim Rejections - 35 USC § 103***

15. To determine whether subject matter would have been obvious, "the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved .... Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented."

*Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966).

The Supreme Court has noted:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.

*KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1740-41 (2007). "Under the correct analysis, any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed." (Id. at 1742).

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:



Art Unit: 1797

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**18. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Forshey et al. in view of Brun et al. (US 4,467,080).**

Forshey et al. does not disclose the spherical mixing vessel. Brun et al. discloses a mixing device wherein the mixing vessel is spherical 1, 2. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the mixing apparatus of Forshey with a spherical mixing vessel as taught by Brun for the purpose of imparting a flow of material in the vessel that drops into the central part of the spherical zone to ensure a thorough and uniform mixing without dead zones (col. 2, lines 37-46).

**19. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Forshey et al. in view of Burr et al. (US 2006/0152998 A1).**

Forshey et al. discloses the mixing vessel having a lid as seen in the Figures but does not disclose the clamping arrangement. Burr et al. discloses a mixing device wherein the mixing vessel 1110 has gasket seal 1140, and a lid clamping arrangement 1160. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the mixing apparatus of Forshey with a clamping arrangement for the lid as taught by Burr for the purpose of sealing the opening of the vessel and to fully enclose the vessel (§ [0088]).

**20. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forshey et al. in view of Kleiger (US 5,419,654).**

Forshey et al. discloses an inlet suction conduit 1003 or 1005 but does not disclose the telescoping conduit. Kleiger discloses a mixing device with an inlet conduit 36 to a mixer 34 that is adjustable by being capable of telescopic movement. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the mixing apparatus of Forshey with an inlet conduit that is capable of telescopic movement as taught by Kleiger for the purpose of enabling expansion and contraction and thus adjustability of the inlet conduit (col. 3, line 65 – col. 4, line 6; col. 5, lines 1-15 and col. 5, line 60 – col. 6, line 20).

Art Unit: 1797

**21. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Forshey et al. in view of Rose (US 4,106,111).**

Forshey et al. disclose an inlet suction conduit 1003 or 1005 but does not disclose the vibrator. Rose discloses a mixing device with a conduit 44 having a vibrator 70 attached thereto. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the mixing apparatus of Forshey with a vibrator on any of the conduits therein as taught by Rose for the purpose of aiding the flow of the material through the conduit thereby preventing clogging (col. 1, lines 35-40 and 57-62).

**22. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forshey et al. in view of Wang et al. (US 6,485,171 B1).**

Forshey et al. does not disclose the level sensor in the mixing vessel . Wang et al. discloses a mixing device having a mixing vessel 12 with a level sensor assembly 30 with an oscillating vane 32. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the mixing apparatus of Forshey with a level sensor in the vessel as taught by Wang for the purpose of detecting the level of material in the mixing chamber (col. 2, lines 48-60).

**23. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Forshey et al. in view of Erickson (US 6,715,195 B2).**

Art Unit: 1797

Forshey et al. discloses the agitation assembly being driven by a motor 64 but not hydraulically driven. Erickson discloses a mixing device having a mixing vessel 16 with an agitation assembly 84 that may be driven by alternative drive means such as a hydraulic drive, a gas motor, an electric motor, a pneumatic motor, or by hand (col. 4, lines 22-36). In view of the teaching that an agitation assembly may be driven by art recognized alternatives, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have substituted the motor drive for the agitation assembly in Forshey with an type of drive, including a hydraulic drive as suggested by Erickson.

### ***Conclusion***

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley in Art Unit 1797 whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri.. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1797

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles E. Cooley/

Charles E. Cooley  
Primary Examiner  
Art Unit 1797

15 September 2009